

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 1769 of 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RATILAL RAMJIBHAI DARJI
VERSUS
KANHAIYALAL MANURAM SHARMA

Appearance:

MS NISHA M PARIKH for the Petitioners
None present for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 28/03/2000

C.A.V. JUDGMENT

Heard the learned counsel for the petitioners.

2. The petitioners filed H.R.P. Civil Suit NO.71/94 in the Small Causes Court for eviction of the defendant - respondent from the suit premises. This suit has been decreed by the trial court on 22nd July, 1997. The decree has been put in execution and it is found by the Appellate Bench of the Small Causes Court that in execution of decree the possession of the suit premises was taken by the petitioners on 9th February, 1998. Thereafter, as it what turns out from the Appellate Bench of the Small Causes Court, Ahmedabad that on 19th April, 1998, the defendant - respondent filed an application under Order 9 Rule 13, C.P.C. for setting aside of the decree. This application came to be allowed by the Small Causes Court, Ahmedabad under the order dated 22-10-1988. The revision application preferred by the petitioner against the decision of the Small Causes Court, Ahmedabad to the Appellate Bench of the Small Causes Court at Ahmedabad came to be rejected under the impugned order. Hence, this revision application.

3. It is true that in the suit filed by the petitioners they have taken the ground that the defendant - respondent has acquired suitable alternative accommodation. It is also stated in the suit that the defendant - respondent is keeping the suit premises locked. This ground is difficult to be taken for the purpose of setting aside of the decree and the substituted service effected upon the defendant respondent at the address of the tenanted premises has to be taken to be not sufficient. Both the courts below held that the substitute service has to be effected upon some conspicuous part of the house in which the defendant is known to have last resided. It is true that the address where the respondent is residing has to be given for service of summons but nevertheless he continued to be in possession of the suit premises and for the purpose of Order 5 of C.P.C. it cannot be taken to be as if he is not residing therein. So long as he is not vacating voluntarily or through the process of the court, the possession of the suit premises remains with him. He continues to be in occupation of the suit premises and as such for the purpose of substituted service this address can be taken to be a sufficient address. It is not in dispute that substitute service has been effected upon the defendant respondent at the address of the suit premises. Both the courts below have committed material irregularity in exercise of their jurisdiction in passing of the impugned orders. It is not the case where on this ground the decree which has been passed in favour of the petitioner should have

been set aside. In case the order of the learned trial court is allowed to stand it will certainly occasion a failure of justice and will cause irreparable injury to the petitioners as now they have to restore back the possession of the suit premises to the defendant respondent. Otherwise also, the substance of the matter has to be considered. The defendant respondent himself has now come up with the case that he is not residing in the suit premises. He has contended that the substituted service effected upon him at the address of the suit premises is not legal for the reason that he is not residing therein and what the plaintiffs petitioners have made the ground for his eviction from the suit premises has been admitted. So the conduct of the parties are also very relevant for the purpose of deciding the suit. He may have any defence but when the decree has been passed then he has come up with the case that he is not residing therein. This conduct itself is sufficient to deny the relief to the defendant respondent. It is very unfair and unreasonable on the part of the tenant that despite of his having acquired alternative suitable accommodation and not residing in the tenanted premises still he has filed all these applications for setting aside of the decree. This is nothing but only a dishonest application on the part of the tenant which has been filed for ulterior motive. In fact and substance it is correct to say that the dishonest persons are being protected by the courts under the technicalities pleas. The courts are not there to protect dishonest litigants. In the facts of this case, the respondent is certainly not an honest and bonafide person.

4. In the result, this revision application succeeds and the same is allowed and the order dated 29-10-1999 passed by the Appellate Bench of the Small Causes Court, Ahmedabad in Civil Revision Application NO. 32/99 at Ex. 24 as well as the order dated 27-10-1998 passed by the Small Causes Court, Ahmedabad in Restoration Application No. 140/98 are quashed and set aside. Rule is made absolute accordingly. As nobody has put appearance for the respondent, no order as to costs.

zgs/-